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REPORT TO THE ECONOMIC AND SOCIAL COUNCIL ON THE FIFTY-THIRD SESSION OF THE COMMISSION

DRAFT REPORT OF THE COMMISSION

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VIII. QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The Commission considered agenda item 8 and sub-items (a), (b), (c) and (d) at its 25th to 31st meetings, from 26 March to 1 April 1997 and at its 56th and 57th meetings, on 11 April 1997 and at its 63rd and 64th meetings on 15 April 1997. 1/

2. For the documents issued under agenda item 8 and sub-items (a), (b), (c) and (d), see annex .. to the present report. For a list of resolutions and decisions adopted by the Commission, see annex .. to the present report.

3. At the 25th meeting, on 26 March 1997, the Chairman-Rapporteur of the Working Group on Arbitrary Detention, Mr. Louis Joinet, introduced the report of the Working Group (E/CN.4/1997/4 and Add.1-3). At the 31st meeting, on 1 April 1997, the Chairman-Rapporteur made his concluding remarks.

4. At the 25th meeting, on 26 March 1997, the Special Rapporteur on the independence of judges and lawyers, Mr. Param Cumaraswamy, introduced his report (E/CN.4/1997/32).

5. At the 28th meeting, on 27 March 1997, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, introduced his report (E/CN.4/1997/31 and Add.1).

6. In the general debate on agenda item 8, statements 2/ were made by the following members of the Commission: Argentina (28th), Austria (29th), Bhutan (29th), Brazil (29th), Chile (28th), Cuba (26th), Egypt (28th), Ethiopia (31st), India (30th), Indonesia (30th), Mexico (30th), Netherlands (on behalf of the European Union) (26th), Pakistan (30th), Republic of Korea (30th), Russian Federation (30th), Sri Lanka (30th), Uganda (30th), United States of America (29th), Uruguay (30th).

7. The Commission heard statements by the observers for: Bahrain (26th), Cameroon (27th), Iran (Islamic Republic of) (31st), Norway (29th), Peru (26th), Poland (27th), Turkey (27th). A statement was also made by the observer for Switzerland (29th).

8. The Commission also heard statements by the following non-governmental organizations: Afro-Asian People's Solidarity Organization (27th), American Association of Jurists (29th), Andean Commission of Jurists (27th), Arab Organization for Human Rights (27th), Article XIX: The International Centre against Censorship (27th), Centre Europe-Tiers Monde (29th), Centre for Justice and International Law (29th), Commission of the Churches on International Affairs of the World Council of Churches (29th), France-Libertés: Fondation Danielle Mitterrand (27th), Franciscans International (29th), International Association against Torture (29th), International Association of Democratic Lawyers (29th), International Association of Educators for World Peace (28th), International Commission of Jurists (27th), International Educational Development, Inc. (27th), International Falcon Movement (31st), International Federation of Human Rights (29th), International Federation of Journalists (28th), International Human Rights Association of American Minorities (29th), International Indian Treaty Council (31st), International Islamic Federation of Student Organizations (30th), International League for the Rights and Liberation of Peoples (28th), International Movement for Fraternal Union among Races and Peoples (27th), International Peace Bureau (29th), International PEN (28th), International Prison Watch (27th), International Progress Organization (29th), International Rehabilitation Council for Torture Victims (27th), Latin American Federation of Associations of Relatives of Disappeared Detainees (27th), Liberation (27th), Movement against Racism and for Friendship among Peoples (31st), Pax Christi International (27th), Pax Romana (27th), Society for Threatened Peoples (30th), Transnational Radical Party (29th), War Resisters' International (27th), Women's International Democratic Federation (27th), World Federation of Democratic Youth (31st),World Muslim Congress (30th), World Organization against Torture (27th).

9. Statements in exercise of the right of reply or its equivalent were made by the representatives of Chile (31st), China (31st), Ethiopia (31st), Malaysia (31st) and Nepal (31st), and the observers for Bahrain (31st), Tunisia (31st), Turkey (31st), Viet Nam (28th) and Yemen (28th)

(a) Torture and other cruel, inhuman or degrading treatment or punishment

10. At the 25th meeting, on 26 March 1997, the Special Rapporteur on the question of torture, Mr. Nigel S. Rodley, introduced his report (E/CN.4/1997/7 and Add.1-3 and Add.3/Corr.1).

11. At the 28th meeting, on 27 March 1997, Mr. Ivan Tosevski, on behalf of the Chairman of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, introduced the report on the mechanisms and activities of the Fund (E/CN.4/1997/27).

12. In the general debate on agenda item 8 (a), statements 2/ were made by the following members of the Commission: Argentina (28th), Austria (29th), Chile (28th), China (28th), Denmark (29th), India (30th), Mexico (30th), Pakistan (30th), Republic of Korea (30th), Russiar Federation (30th), Sri Lanka (30th), United States of America (29th).

13. The Commission heard statements by the observers for: Cameroon (27th), Poland (27th), Senegal (29th), Slovakia (28th), Sudan (28th) and Turkey (27th). A statement was also made by the observer for Switzerland (29th).

14. The Commission also heard statements by the following non-governmental organizations: African Commission of Health and Human Rights Promoters (29th), Afro-Asian People's Solidarity Organization (27th), Asian Cultural Forum on Development (30th), Centre Europe-Tiers Monde (29th), Friends World Committee for Consultation (Quakers) (27th), International Association against Torture (29th), International Association of Democratic Lawyers (29th), International Association of Educators for World Peace (28th), International Commission of Jurists (27th), International Educational Development, Inc. (27th), International Federation of Human Rights (29th), International Human Rights Association of American Minorities (29th), International Indian Treaty Council (31st), International Islamic Federation of Student Organizations (30th), International League for the Rights and Liberation of Peoples (28th), International Prison Watch (27th), International Progress Organization (29th), Latin American Federation of Associations of Relatives of Disappeared Detainees (27th), Liberation (27th), Movement against Racism and for Friendship among Peoples (31st), Pax Christi International (27th), Pax Romana (27th), Society for Threatened Peoples (30th), United Towns Agency for North-South Cooperation (28th), War Resisters' International (27th), Women's

International Democratic Federation (27th), World Federation of Democratic Youth (31st), World Muslim Congress (30th), World Organization against Torture (27th), World Society of Victimology (31st).

15. A statement in exercise of the right of reply was made by the representative of Nepal (31st).

(b) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

16. In the general debate on agenda item 8 (b), statements 2/ were made by the representatives of: Argentina (28th), China (28th), India (30th), Republic of Korea (30th), Russian Federation (30th).

17. The Commission heard statements by the observers for: Senegal (29th), Slovakia (28th).

18. The Commission also heard a statement by the following non-governmental organization: Asian Cultural Forum on Development (30th).

(c) Question of enforced or involuntary disappearances

19. At the 25th meeting, on 26 March 1997, the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, Mr. Ivan Tosevski, introduced the report of the Working Group (E/CN.4/1996/34).

20. At the same meeting, the expert member of the Working Group responsible for the special process on missing persons in the territory of the former Yugoslavia, Mr. Manfred Nowak, introduced his report (E/CN.4/1997/55 and Corr.1).

21. In the general debate on agenda item 8 (c), statements 2/ were made by the representatives of Angola (28th), Argentina (28th), Chile (28th), Indonesia (30th), Mexico (30th), Pakistan (30th), Sri Lanka (30th).

22. The Commission heard statements by the observers for: Bosnia and Herzegovina (25th), Croatia (25th), Cyprus (27th), Sudan (28th). A statement was also made by the observer for Switzerland (29th).

23. The Commission also heard statements by the following non-governmental organizations: African Association of Education for Development (31st), American Association of Jurists (29th), American Federation of Associations of Relatives of Disappeared Detainees (27th), Asian Cultural Forum on Development (30th), Centre Europe-Tiers Monde (29th), Himalayan Research and Cultural Foundation (27th), International Association of Democratic Lawyers (29th), International Educational Development, Inc. (27th), International Human Rights Association of American Minorities (29th), International Institute for Peace (27th), International Islamic Federation of Student Organization (30th),

Latin American Federation of Associations of Relatives of Disappeared Detainees (27th), Liberation (27th), Movement against Racism and for Friendship among Peoples (31st), Society for Threatened Peoples (30th), World Federation of Democratic Youth (31st), World Muslim Congress (30th), World Society of Victimology (31st).

24. Statements in exercise of the right of reply or its equivalent were made by the representative of the Philippines (31st) and the observer for Morocco (31st).

(d) Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

25. At the 26th meeting, on 26 March 1997, the Chairman-Rapporteur of the working group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mr. Carlos Vargas Pizarro, introduced the report of the working group (E/CN.4/1997/33 and Add.1).

26. In the general debate on agenda item 8 (d), statements 2/ were made by the following members of the Commission: Chile (28th), China (28th), Ecuador (28th), Russian Federation (30th).

27. The Commission heard statements by the observers for Poland (27th) and Slovakia (28th). A statement was also made by the observer for Switzerland (29th).

Children and juveniles in detention

28. At the 56th meeting, on 11 April 1997, the representative of Austria introduced draft decision E/CN.4/1997/L.32, sponsored by Austria. Belgium, the Czech Republic, Equatorial Guinea and Romania subsequently joined the sponsors.

29. The draft decision was adopted without a vote. For the text of the decision as adopted, see chapter II, section B, decision 1997/..

Independence and impartiality of the judiciary, jurors and assessors and independence of lawyers

30. At the 56th meeting, on 11 April 1997, the observer for Hungary introduced draft resolution E/CN.4/1997/L.49, sponsored by Argentina, Australia, Austria, Belgium, Benin, Bulgaria, Canada, Cape Verde, Chile, the Czech Republic, Denmark, El Salvador, Finland, France, Germany, Greece, Haiti, Honduras, Hungary, Ireland, Italy, Lithuania, Luxembourg, Madagascar, Nepal, the Netherlands, Norway, Poland, Portugal, the Republic of Korea, Romania, the Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden,

Switzerland, the United Kingdom of Great Britain and Northern Ireland and Uruguay. The Dominican Republic, Equatorial Guinea, Liechtenstein, Mali, Senegal, Togo and the United States of America subsequently joined the sponsors.

31. The draft resolution was orally revised by the observer for Hungary by inserting in the seventh preambular paragraph, after "Treatment of Offenders", the words "held at Cairo from 29 April to 8 May 1995,".

32. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the estimated administrative and programme budget implications 3/ of the draft resolution.

33. The draft resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/23.

Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

34. At the 56th meeting, on 11 April 1997, the observer for Costa Rica introduced draft resolution E/CN.4/1997/L.50, sponsored by Argentina, Austria, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Costa Rica, Cyprus, the Czech Republic, Denmark, the Dominican Republic, El Salvador, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Italy, Liechtenstein, Luxembourg, Mexico, the Netherlands, Nicaragua, Norway, Peru, Poland, Portugal, Romania, the Russian Federation, Senegal, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela. Belarus, Canada, Colombia, Ecuador, Equatorial Guinea and Estonia subsequently joined the sponsors.

35. In accordance with rule 28 of the rules of procedure of the functional commissions of the Economic and Social Council, the attention of the Commission was drawn to the estimated administrative and programme budget implications 3/ of the draft resolution.

36. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/24.

Torture and other cruel, inhuman or degrading treatment or punishment

37. At the 56th meeting, on 11 April 1997, the representative of Denmark introduced draft resolution E/CN.4/1997/L.51, sponsored by Argentina,

Australia, Austria, Belgium, Canada, Chile, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, the Republic of Korea, Romania, the Russian Federation, San Marino, Senegal, Slovakia, Slovenia, Spain, Switzerland, Ukraine and the United Kingdom of Great Britain and Northern Ireland. Belarus, Bulgaria, Costa Rica, Latvia, Madagascar, New Zealand, Poland, Portugal, South Africa, Sweden, the United States of America and Venezuela subsequently joined the sponsors.

38. The draft resolution was orally revised by the representative of Denmark by deleting, in operative paragraph 27, the phrase ",especially those mentioned by the Special Rapporteur in his report,".

39. A statement in connection with the draft resolution was made by the representative of China, who called for a roll-call vote on operative paragraph 18.

40. The representative of Egypt proposed to replace operative paragraph 18 which read "Commends the Special Rapporteur on his report (E/CN.4/1997/7 and Add.1-3)", by "Takes note of the report of the Special Rapporteur (E/CN.4/1997/7 and Add.1-3)".

41. Statements in connection with the draft resolution, the amendment proposed by Egypt and the proposal made by China were made by the representatives of Algeria, Brazil, Canada, Cuba, China, Nepal and the United Kingdom of Great Britain and Northern Ireland.

42. Statements in explanation of vote before the vote were made by the representatives of Algeria and Brazil.

43. At the request of the representative of Cuba, consideration of the draft resolution was postponed.

44. At the 57th meeting, on 11 April 1997, the Commission resumed consideration of draft resolution E/CN.4/1997/L.51.

45. The representative of Denmark orally revised the draft resolution by replacing, in operative paragraph 18, the words "on his report (E/CN.4/1997/7 and Add.1-3)" by "for his work as reflected in his report (E/CN.4/1997/7);".

46. A statement in connection with the draft resolution, as revised by Denmark, was made by the representative of China.

47. The draft resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/38.

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48. At the 56th meeting, on 11 April 1997, the representative of Portugal introduced draft resolution E/CN.4/1997/L.53, sponsored by Argentina, Austria, Belgium, Brazil, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Peru, the Philippines, Portugal, the Republic of Korea, the Russian Federation, San Marino, Slovakia, Spain and Sweden. Australia, Egypt, Liechtenstein, Madagascar, Malta, New Zealand, the Netherlands, Norway, Poland, the United Kingdom of Great Britain and Northern Ireland, Ukraine and Uruguay subsequently joined the sponsors.

49. A statement in explanation of vote before the vote was made by the representative of Mexico.

50. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/25.

Question of enforced or involuntary disappearances

51. At the 57th meeting, on 11 April 1997, the representative of France introduced draft resolution E/CN.4/1997/L.54, sponsored by Angola, Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, Congo, Côte d'Ivoire, Cyprus, the Czech Republic, Denmark, the Dominican Republic, Estonia, Finland, France, Georgia, Germany, Greece, Guinea, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Madagascar, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Brazil, Cuba, Ecuador, Equatorial Guinea, Israel, the Russian Federation and Senegal subsequently joined the sponsors.

52. Statements in connection with the draft resolution were made by the representatives of Cuba and France.

53. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/26.

Right to freedom of opinion and expression

54. At the 57th meeting, on 11 April 1997, the representative of Canada introduced draft resolution E/CN.4/1997/L.56, sponsored by Argentina, Australia, Austria, Brazil, Bulgaria, Cameroon, Canada, Chile, Côte d'Ivoire, the Czech Republic, Denmark, Finland, France, Germany, Hungary, India,

Ireland, Italy, Japan, Liechtenstein, Luxembourg, the Netherlands, Norway, Peru, Portugal, Slovakia, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland. Bangladesh, Colombia, the Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Greece, Madagascar, Nepal, New Zealand, Nicaragua, the Philippines, Poland, Romania, the Russian Federation, Togo, Uganda, Ukraine, the United States of America, Uruguay and Venezuela subsequently joined the sponsors.

55. The draft resolution was orally revised by the representative of Canada by deleting, at the end of operative paragraph 10, the words "and to consider whether such deterioration could signal a further weakening in the protection and enjoyment of human rights in a country".

56. The draft resolution, as orally revised, was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/27.

Hostage-taking

57. At the 57th meeting, on 11 April 1997, the observer for Peru introduced draft resolution E/CN.4/1997/L.57, sponsored by Afghanistan, Argentina, Bolivia, Brazil, Canada, China, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Japan, Peru, the Russian Federation, Turkey and Uruguay. Algeria, Australia, Bangladesh, Belarus, Bhutan, Chile, Costa Rica, Cyprus, Equatorial Guinea, the Dominican Republic, Greece, India, Indonesia, Iraq, Ireland, Italy, Israel, Madagascar, the Netherlands, Nicaragua, the Philippines, Poland, the Republic of Korea, Spain, Sri Lanka, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela subsequently joined the sponsors.

58. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/28.

The right to restitution, compensation and rehabilitation of victims of gross violations of human rights and fundamental freedoms

59. At the 57th meeting, on 11 April 1997, the representative of Chile introduced draft resolution E/CN.4/1997/L.58, sponsored by Argentina, Austria, Bulgaria, Canada, Cape Verde, Chile, Colombia, Cuba, Denmark, the Dominican Republic, Ecuador, Estonia, Finland, France, Hungary, Italy, the Netherlands, Nicaragua, Poland, the Republic of Korea, Senegal, South Africa, Sweden, the United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela. Angola, Equatorial Guinea, Germany, Madagascar and the Philippines subsequently joined the sponsors.

60. The draft resolution was adopted without a vote. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/29.

Question of arbitrary detention

61. At the 58th meeting, on 11 April 1997, at the request of the representative of Cuba, consideration of draft resolution E/CN.4/1997/L.79 and the proposed amendment contained in document E/CN.4/1997/L.99 was postponed.

62. Statements in connection with the postponement of the draft resolution and the proposed amendment were made by the representatives of Brazil, Canada, China, Cuba, India, Mexico, the Netherlands and the United Kingdom of Great Britain and Northern Ireland.

63. At the 63rd meeting, on 15 April 1997, the representative of France introduced draft resolution E/CN.4/1997/79, sponsored by Argentina, Austria, Belgium, Bulgaria, Canada, Chile, Cyprus, the Czech Republic, Denmark, El Salvador, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Poland, Portugal, Romania, the Russian Federation, Senegal, Slovakia, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and Uruguay. Angola, Bulgaria and Ecuador subsequently joined the sponsors.

64. The representative of France orally revised the draft resolution E/CN.4/1997/L.79 by replacing, in operative paragraph 2 (d), the words "détention arbitraire" by "privation arbitraire de liberté".

65. At the same meeting, the representative of Cuba introduced amendments proposed to draft resolution E/CN.4/1997/L.79 contained in document E/CN.4/1997/L.99.

66. At the same meeting, the representative of France introduced document E/CN.4/1997/L.108 containing sub-amendments to the amendments proposed by the representative of Cuba.

67. At the 64th meeting, on 15 April 1997, statements in connection with the draft resolution as well as the proposed amendment and sub-amendments were made by the representatives of Algeria, Malaysia, Pakistan and Sri Lanka.

68. The amendment to draft resolution E/CN.4/1997/L.79 proposed by the delegation of Cuba (E/CN.4/1997/L.99) was withdrawn. The proposed amendment read as follows:

> "Add the following text as a new final preambular paragraph:
>
> "Bearing in mind that the determination of criteria to establish the respective competence and jurisdiction of the national courts in each country, as well as the specific provisions of national legislation

corresponding to the international legal obligations entered into by each State, is a matter pertaining to the domestic sphere of State sovereignty."

69. The sub-amendments to draft resolution E/CN.4/1997/L.79 proposed by the delegation of France (E/CN.4/1997/L.108) were also withdrawn. The proposed sub-amendments read as follows:

"Amend the proposed new preambular paragraph as follows:

"1. Delete 'corresponding to the international legal obligations entered into by each State';

"2. Add at the end of the text proposed: 'provided that it complies with the relevant international standards set forth in the Universal Declaration of Human Rights and the relevant international legal instruments it has accepted'".

70. The draft resolution was adopted without a vote. The representative of the United States of America made a statement in connection with the resolution after its adoption.

71. For the text of the resolution as adopted, see chapter II, section A, resolution 1997/50.

The right to a fair trial

72. At the 57th meeting, on 11 April 1997, the Commission considered draft decision 5, recommended by the Sub-Commission on Prevention on Discrimination and Protection of Minorities for adoption by the Commission (see E/CN.4/1997/2-E/CN.4/Sub.2/1996/41, chap. I, sect. B).

73. The draft decision was adopted without a vote. For the text as adopted, see chapter II, section B, decision 1997/..

Question of human rights and states of emergency

74. At the 57th meeting, on 11 April 1997, the Commission considered draft decision 6, recommended by the Sub-Commission on Prevention on Discrimination and Protection of Minorities for adoption by the Commission (see E/CN.4/1997/2-E/CN.4/Sub.2/1996/41, chap. I, sect. B).

75. The draft decision was adopted without a vote. For the text as adopted, see chapter II, section B, decision 1997/..

76. At the 64th meeting, on 15 April 1997, the representative of India made a statement in explanation of the vote after the vote on draft decisions recommended by the Sub-Commission on Prevention of Discrimination and Protection of Minorities for adoption by the Commission.